

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO  
VILLATORO, MISAEL ALEXANDER MARTINEZ  
CASTRO, ANGEL MARTINEZ, EDWIN ULLOA  
MOREIRA and MATEO UMANA, individually and on  
behalf of all others similarly situated,

*Plaintiffs,*

-against-

KELCO CONSTRUCTION, INC., KELCO  
LANDSCAPING, INC., E.L.M. GENERAL  
CONSTRUCTION CORP. D/B/A KELLY'S CREW,  
JOHN KELLY and JOSEPH PROVENZANO,

*Defendants.*

Civil Action No.: 1:21-cv-09014-  
PAE-SDA

**NOTICE OF MOTION**

**ORAL ARGUMENT  
REQUESTED**


**PLEASE TAKE NOTICE**, that, upon the Memorandum of Law filed contemporaneously herewith, and all papers and proceedings heretofore had herein, Defendants Kelco Construction, Inc., Kelco Landscaping, Inc. E.L.M. General Construction Corp. d/b/a Kelly's Crew, John Kelly, and Joseph Provenzano (collectively, the "Defendants") will move this Court, before the Honorable Paul A. Engelmayer, U.S.D.J., of the United States District Court for the Southern District of New York, at the courthouse thereof located at 40 Foley Square, New York, New York 10007, on the 7th day of July, 2023, or as soon thereafter as counsel may be heard, for an order, pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing, in its entirety and with prejudice, the Third Amended Complaint (the "TAC") of Plaintiffs Carlos Alvarez Chicas, Alonso Villatoro, Misael Alexander Martinez Castro, Angel Martinez, Edwin Ulloa Moreira, and Mateo Umana (collectively, the Plaintiffs"), dismissing, with prejudice, the TAC's fourth cause of action, and granting Defendants such other and further relief as the Court may deem just and proper under the circumstances.

**PLEASE TAKE FURTHER NOTICE**, that, pursuant to Rule 6.1(b) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, the deadline by which any answering memoranda, if any, shall be served upon Defendants undersigned counsel so as to be received by no later than the fourteenth day after service of the instant motion.

Dated: New York, New York  
June 9, 2023

**GRAE & GRAE, LLC**

By:

  
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Construction, Inc., Kelco Landscaping,  
Inc. E.L.M. General Construction Corp.  
d/b/a Kelly's Crew, John Kelly, and  
Joseph Provenzano*